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## STUDENT ISSUES

- 1. DISCIPLINE FOR OFF-CAMPUS CONDUCT.** Sec. 22-33-106(1)(c), C.R.S., authorizes suspension/expulsion from public schools for “behavior on or off school property which is detrimental to the welfare or safety of other pupil or school personnel including behavior which creates a threat of physical harm to the child or to other children.”

- 1.1 Conduct at “off-campus” school events/activities is treated as “on-campus.”
- 1.2 District may impose discipline for off-campus conduct that does not involve school events/activities if there is some nexus or connection to school. In making that determination, the administration should consider the totality of the circumstances in each unique situation, including the following factors:
  - 1.2.1 The nature of the activity/conduct.
  - 1.2.2 The degree of the negative impact on other students and/or school personnel.
  - 1.2.3 Number of other students directly affected.
  - 1.2.4 The location where such conduct occurred. Proximity to, or relationship to, school grounds?
  - 1.2.5 Whether such conduct occurred during the school day or if on non-school day, during the school year.
  - 1.2.6 Whether the student(s) left school premises to engage in such conduct.
  - 1.2.7 Whether the student induced others to leave school premises to engage in such conduct.
  - 1.2.8 Whether the student(s) returned to school after engaging in the prohibited conduct.

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- 1.2.9 The degree of the resulting negative impact of such conduct on school activities, school personnel, or the educational process, including disruption and interference of the educational process.
    - 1.2.10 Other factors which the administration deems relevant and which are related to the welfare and safety of students, school personnel, or the operation of school, school activities, or the educational process.
  - 1.3 Legislature made determination that off-campus sexual assaults should be given immediate consideration and has defined the nexus required for expulsion. When notified by court/police that a petition has been filed in juvenile court charging a student 12-18 years of age with the commission of sexual assault (in any form) or a crime of violence (using deadly weapon or causing serious bodily harm), Sec. 22-33-105(5), C.R.S., requires the district's expulsion officer to make an immediate determination.
    - 1.3.1 Must determine:
      - a. whether the student has exhibited behavior that is detrimental to the safety, welfare and morals of the other students or of school personnel in the school; and
      - b. whether educating the student in the school may disrupt the learning environment in the school, provide a negative example for other students, or create a dangerous and unsafe environment in the school.
  - 1.4 If determination is made that student should not be educated in school due to the alleged conduct, district may either:
    - 1.4.1 proceed with a suspension/expulsion hearing; or
    - 1.4.2 wait until the conclusion of the criminal proceedings to consider expulsion; and if so, district must provide appropriate alternative education (home based or on-line etc.) while awaiting the criminal charges. (Note: no credit can be given for time spent in alternative program towards any period of expulsion).

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1.5 Off-campus conduct which is in violation of athletic rules may be punished by the coach/athletic director even though such conduct may not constitute a violation of student discipline code or even though there is insufficient nexus for suspension/expulsion from school.

2. **DUE PROCESS ISSUES.** School boards are required to adopt a code of conduct/discipline code, and procedures for “the suspension and expulsion of, or denial of admission to, a pupil, *which procedures shall afford due process of law.*” Sec. 22-32-109(1)(w), CRS. Due process includes both substantive rights and procedural safeguards.

2.1 Suspension hearing is less formal than expulsion hearing because the “right” being deprived is minimal (less than 10 days) in comparison to expulsion (up to one year).

2.2 Conduct as thorough of an investigation as may be warranted under the circumstances. Who, what, when, where, and sometimes why (normally, intent not required---but now a recent challenge to that rule is pending in courts as to whether zero-tolerance policy can legally eliminate intent).

2.3 Regardless of who the witness/accuser is, take notes of what was told to you or to teachers/staff (i.e., insure that records of hearsay statements are as accurate as possible).

2.4 Notice (usually verbal at this level) must be given to student as to:

2.4.1 What the student did to warrant suspension (i.e., the infraction or violation of the code); and

2.4.2 A summary of the “evidence” against the student, or reasons why the principal believes that this student engaged in such conduct/activity.

2.5 **Opportunity to Be Heard** must be afforded the student. Focus is different from criminal trial. Purpose of an administrative due process hearing is to give an opportunity to refute, explain, deny or “present reasons why the proposed action should not be taken” and to “invoke the discretion of the decision maker.” *Cleveland Board of Education v. Loudermill*, 470 U.S 532 (1985).

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- 2.6 No right to an attorney, to cross-examine witnesses who give written statements, or to look at your notes. **HOWEVER**, recent Colorado court of appeals decision held that a student was denied procedural due process rights by not being able to compel the attendance of teachers who would have given favorable supportive statements as to her character. The court noted that the “totality of the circumstances” will be determinative as to whether the expulsion hearing was “fair.” (“School district is not allowed to isolate potential witnesses from the student.”) Issue was whether she should be expelled and if so, for how long, therefore character and other behaviors were relevant and principal refused to allow her to ask supportive teachers to be there. (Why not a written statement?!)

### 3. RELIGIOUS ISSUES. “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”

- 3.1 Invocations. The Supreme Court has ruled that there is a crucial difference between government speech endorsing religion (which is prohibited by the First Amendment) and private speech endorsing religion (which is protected by the First Amendment). Thus, prayerful invocations over loud speaker before football games have been ruled unconstitutional, but wide-open school policy of allowing seniors complete and unfettered discretion to select topics and speakers for graduation without any school involvement, review, or censorship of that speech, has been held to be private speech and thus constitutional even if it results in a student giving a religious-themed speech (and would be equally constitutional if an atheist student condemned religion in his/her speech!).
- 3.2 Prayer at school. Government led prayer before school or classes is prohibited but any student may engage in private prayer at school. “Meet at the flag pole” is permissible. No government entanglement. Ninth Circuit has ruled that coerced recitation of Pledge of Allegiance is violative of First Amendment under both religious and free-speech aspects. NOT the rule in 10<sup>th</sup> Circuit.
- 3.3 Student Groups. Equal Access Act of 1984 upheld in 1990 by Supreme Court. It requires secondary schools which receive federal funding to allow religious clubs/student organizations to meet on school premises on the same basis as other *non-curriculum* related activities (defined as any group that does not directly relate to the body of courses offered by the school). Very loose rules regarding what is curriculum related. If you

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teach a course "The Bible As Literature" then religious club may be a curriculum related organization.

- 3.4 Teacher's Activities. The Establishment Clause prohibits teacher activities that create the impression that the school endorses religion or creates excessive entanglement of the school with religion. Instruct your teachers to teach through "attribution" (e.g., "Some Hindus believe that..."). The age and grade level is also relevant with younger children being more impressionable (e.g., successful suit enjoining teacher from using a "Mother Earth" altar in class for grade school students to conduct solemn ceremony, place flowers upon, light candles, and read Native American "prayers" in celebration of Earth Day.) Courts still adhere to the distinction between *teaching about* different religions and *celebrating* or endorsing religions. Temporary display of religious symbols as teaching aids may be permissible. Music teachers should avoid conducting music programs devoted entirely to religious themes especially if they coincide with Christmas or Easter or Hanukah or.....
- 3.5 Columbine Tiles Case. The 10<sup>th</sup> Cir. Court of Appeals ruled that Columbine School's rules regarding editorial control over the installation/display of citizen painted tiles (a non-public forum) were reasonably related to educational concerns, and thus school could prohibit the use of tiles bearing religious messages, references to the killers, references to the deceased, religious symbols, etc. Court determined that "school sponsored" speech often falls between government speech and private speech and is speech that a school affirmatively promotes as opposed to speech that it tolerates. Expressive activities of students, parents, and even the public that might reasonably bear the imprimatur of the school constitute school-sponsored speech over which the school may exercise editorial control so long as the district's actions are reasonably related to legitimate pedagogical concerns. Supreme Court let ruling stand and refused to accept a further appeal. [Reasons for rejection of the tiles were (1) district did not want to make school a memorial to the tragedy (2) wanted to maintain the interior of the school as a positive learning environment; (3) to avoid disruption from unrestrained religious debate on the hallway walls.]
- 3.6 Student excused absences. Be sensitive to religious needs and requirements of students. Allow reasonable number of excused absences without penalties (but requiring make-up work) for any parent-requested absence for religious observance. Conversely, allow parents to withdraw

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students from elementary “parties” which may conflict with religious views (e.g., Halloween costume parties).

**5. THE PROBLEM OF THE 18 YEAR OLD SENIOR.** Under FERPA, once a student turns 18, he/she has control over student records, not the parents. But student still remains subject to the parent’s control over other school issues (e.g., need parental signed permission for absences).